on September 2, 1986, and was assigned a blind vendor.

In mid-March 1989, GSA verbally notified the chief of DCRSA's Randolph-Sheppard Vending Facility program that, at an unspecified time in the future, GSA would be making structural repairs to the ROB cafeteria. Subsequently, in a letter dated August 1, 1990, GSA notified DCRSA that the repairs would begin on September 1, 1990, and that the cafeteria would be closed for approximately four months. The letter further indicated that during the renovations the fourth floor snack bar in the building would be used as a temporary facility for the blind vendor. GSA also alerted DCRSA that the new renovated cafeteria would have an upgraded menu, design changes, and increased service levels.

By letter dated August 14, 1990, DCRSA made various requests concerning the renovation and the new cafeteria. Specifically, DCRSA requested a walk-through of the temporary site, a proposed menu, an opportunity to review the design for the new cafeteria, a market-based survey, and a subsidy from GSA to offset the hardship of the vendor's employees during the renovation.

Responding by letter of August 23, 1990, GSA informed DCRSA that it would arrange for a walk-through of the temporary site and would waive payment from DCRSA of the one and one-half percent franchise fee during the renovation period. GSA also offered to meet with DCRSA to discuss any of DCRSA's concerns. The renovation project was delayed as the result of design errors and the discovery of asbestos.

On January 29, 1991, GSA met with DCRSA representatives to discuss the renovation completion and the operation of the new cafeteria. At that time, GSA formally requested by letter dated January 29 that DCRSA submit an operating plan for the new cafeteria. GSA's request for the plan contained 13 specific items of information.

DCRSA submitted its proposal on March 8, 1991. By letter dated March 28, 1991, GSA rejected DCRSA's proposal as being deficient in each of the 13 areas listed in its earlier request. GSA offered to meet with DCRSA to discuss the proposal. However, DCRSA declined this offer and, instead, asked for and received a written critique. On April 10, 1991, DCRSA submitted a revised proposal. By letter dated April 19, 1991, GSA again rejected DCRSA's proposal, and again DCRSA declined GSA's offer to meet to discuss the proposal.

Subsequently, by letter dated April 26, 1991, GSA informed DCRSA that it had chosen another contractor to operate the cafeteria and that DCRSA would have to close its operation by May 3, 1991.

On May 3, 1991, the DCRSA's blind vendor filed a complaint with the United States District Court for the District of Columbia against officials of GSA seeking a temporary restraining order, a preliminary injunction, compensatory damages, and attorney's fees.

The court issued a temporary restraining order effective through May 9, 1991, prohibiting GSA from terminating DCRSA's permit. GSA agreed not to terminate the permit until after the preliminary injunction hearing.

On May 14th, DCRSA filed a complaint for arbitration with the Secretary of Education. The preliminary injunction hearing was held on May 28, at which time GSA agreed to terminate its contract with the other vendor and conduct a full and open competition pursuant to 34 CFR 395.33(b). The court denied the preliminary injunction without prejudice on May 28 and ordered the parties to pursue arbitration under the Randolph-Sheppard Act, as amended.

The vendor continued to operate the fourth floor snack bar, while GSA advertised for bids to operate the fifth floor cafeteria. On June 7, 1991, GSA issued a Request for Proposal (RFP) for the operation of the cafeteria. GSA held a pre-bid proposal conference for offerers on June 13. The solicitation closed on July 8, 1991. DCRSA responded to the RFP. The maximum number of points to be earned was 1,000 for rating each applicant's proposal. The competitive range was set at 900 points or better. DCRSA received a point value of 691, which did not fall within the competitive range.

On October 1, 1991, GSA awarded the cafeteria contract to another contractor, effective October 15. On October 2, GSA requested that DCRSA close the fourth floor snack bar and vacate the fifth floor kitchen by October 11, 1991. Shortly thereafter, DCRSA and the vendor filed with the United States District Court for the District of Columbia a motion for a preliminary injunction, which was denied on October 21, 1991. On October 24, 1991, the denial of emergency relief was upheld by the United States Court of Appeals for the District of Columbia. Consequently, DCRSA vacated the fourth and fifth floor facilities on October 25, and the other contractor opened the renovated cafeteria on October 28, 1991.

An arbitration hearing was held on March 17 and 18, 1992, pursuant to section 107d–2.

Arbitration Panel Decision

The arbitration panel in a majority opinion found that GSA fully complied with the Act in its negotiations with DCRSA regarding the renovations of the cafeteria. The panel further found that, after issuing an RFP on June 7, 1991, GSA fully complied with the Act in the manner in which it conducted its solicitation of bids for the cafeteria. However, the panel ruled that GSA exceeded its authority by awarding the contract to GSI, a private contractor, prior to the RFP seeking open bids, thereby resulting in DCRSA's motion in United States District Court to compel GSA to comply with 34 CFR 395.33(b) by publishing an RFP.

In determining a remedy, the panel instructed GSA to pay DCRSA's and the vendor's reasonable attorneys' fees, which they expended in seeking relief in court. The parties were instructed to agree upon the amount of the attorneys' fees within 30 days of the award, with the actual reimbursement to take place within 90 days of the panel's award.

All other relief sought by the vendor was denied. The panel retained jurisdiction over the case for 120 days following the panel's award in order to resolve any remaining disputes over the amount of attorneys' fees to be paid.

One panel member dissented.

On May 6, 1994, the panel made its final award of attorneys' fees to DCRSA in the amount of $967.89 and to the vendor in the amount of $14,800.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the United States Department of Education.

Dated: May 26, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13407 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 16, 1993, an arbitration panel rendered a decision in the matter of *Joseph A. Roan and Kenneth White v. Massachusetts Commission for the Blind, (Docket No. R–S/92–12).* This panel was convened by the Secretary of

the U. S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by Joseph A. Roan and Kenneth White on July 2, 1992. The Randolph-Sheppard Act (the Act) creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may file a complaint with the Secretary of the U.S. Department of Education who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230 Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–93l7. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

The complainants, Joseph A. Roan and Kenneth White, are licensed blind vendors in the vending program operated by the Massachusetts Commission for the Blind, the SLA. Mr. Roan was the manager of a facility located in the lobby of the John F. Kennedy Federal Building (JFK Federal Building). Mr. White was the manager of a facility located on the sixth floor of the same building.

In the Fall of l991, the JFK Federal Building was scheduled for extensive renovation, which involved the closing, in phases, of the five vending facilities at this site, including the ones operated by Messrs. Roan and White. Due to the renovation of the building, the General Services Administration (GSA) entered into an agreement with the SLA to lease space at One Congress Street. The SLA planned to use this space as a vending facility and characterized this location as a ''temporary stand'' to accommodate a vendor who was displaced during the renovation of the JFK Federal Building.

The complainants alleged that the SLA inappropriately characterized this facility as a ''temporary location'' to accommodate vendors displaced during the renovation of the JFK Federal Building. The complainants further alleged that the SLA failed to advertise for bid to all vendors the stand located at One Congress Street, but rather moved a displaced vendor into this location in violation of 20 U.S.C. 107a(b) and 34 CFR 395.7(c) relating to the transfer and promotion of vendors by the SLA.

On April 22, 1992 both Mr. Roan and Mr. White received a notice that the vendor of the IRS lobby facility at the JFK Federal Building was retiring and that this location was going out for bid. Mr. Roan and Mr. White jointly wrote a letter to the SLA requesting that the IRS lobby stand not be put up for bid, but rather that complainants be placed there to operate this facility while their respective stands were closed due to the scheduled renovation of the JFK Federal Building. Complainants' request was denied by the SLA. Subsequently, Mr. Roan and Mr. White requested and received an administrative review and a fair hearing by the SLA. In an opinion dated May 26, 1992, the Hearing Officer ruled that the SLA properly negotiated for the establishment of the Congress Street stand as a temporary accommodation to otherwise displaced JFK Federal Building vendors. With regard to complainants' objections that the IRS lobby stand was put up for bidding, the Hearing Officer ruled that this location was established as a permanent facility, which made it open to bidding by all vendors in the Massachusetts Vending Facility Program. Mr. Roan and Mr. White filed a complaint with the U.S. Department of Education requesting arbitration regarding the establishment of the temporary stand at One Congress Street and the open bidding on the IRS lobby stand. A hearing was conducted on April 13, 1993.

Arbitration Panel Decision

The arbitration panel ruled that there is no dispute that there is no express authority in the regulations for the creation of temporary stands. There is also nothing in the regulations to preclude this administrative action. The use of this device represents a reasonable effort by the SLA to further the program objectives of providing employment for blind vendors.

To lessen the effects of building renovations on vending facilities in the program, the SLA goes to great lengths to find a temporary site within the same workplace for the displaced vendor until his or her permanent location is back in operation.

The SLA has followed this practice in the past, and it is recognized by vending facility managers that the temporary sites are different in their essential nature from permanent vending facility sites, and, therefore, these locations are not subject to the posting and bidding procedures. In fact, the panel noted that there was not a challenge to this procedure when One Congress Street was used as a temporary stand during Phase One of the renovation at the JFK Federal Building. When Phase Two occurred and two vendors were to be displaced, the SLA used the same standard operating procedure in assigning the temporary location. Based on seniority, One Congress Street was assigned to another displaced vendor rather than Mr. White. Subsequently, Mr. White filed for an arbitration hearing. He was joined in his request by Joseph Roan, who was facing displacement during the third phase of the renovation.

The panel ruled that, even assuming that the SLA should have posted the One Congress Street location, there was no indication that Mr. White, as the junior vendor, would have benefited in any way from such a procedure.

Regarding the IRS lobby stand, the panel noted that this was not a temporary location, but rather a permanent and highly desirable vending facility. Therefore, under the clear regulations of the SLA, permanent vending facilities must be opened for bid. Further, the panel reasoned that there is nothing in the statute, regulations, or legislative history that suggests that an SLA has the authority to use a permanent vending facility as a temporary accommodation site to save a particular vendor from dislocation. The Randolph-Sheppard Act gives preference to blind vendors for licensing. It does not create a preference among blind vendors as to who will work at which vending facility.

The panel found that complainants' argument that the SLA was establishing a policy of promotion over employment was unpersuasive. The panel determined that the program embodies a system of promotion by bidding. At no time has there been a guarantee that all licensed vendors would have a vending location before any vendor could move to a more desirable location.

The panel ruled that complainants Roan and White have benefited from the bidding system, winning more profitable stands on multiple occasions despite the fact that other vendors have been without a place of employment. The panel reasoned that simply because Mr. Roan and Mr. White perceived a method of preserving their level of

business during the JFK Federal Building renovations did not mean that the SLA's longstanding system of dealing with displaced vendors should be changed.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 25, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13354 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Conduct of Employees

Notice of Waiver Pursuant to section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy (''DOE'') Organization Act (Pub. L. 95–91, hereinafter referred to as the ''Act'') prohibits a ''supervisory employee'' (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any ''energy concern'' (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where exceptional hardship would result, where the interest is a pension, interest or other similarly vested interest, or where the waiver is in the Department's interest and the asset is placed in a qualified trust that is created in accordance with regulations promulgated by the Office of Government Ethics.

Dr. Alexander MacLachlan is serving as Deputy Under Secretary for Technology Partnerships and Economic Competitiveness. As a result of his past employment with du Pont (E.I.) de Nemours and Company (DuPont), Dr. MacLachlan has a vested pension interest in the DuPont Pension and Retirement Plan within the meaning of section 602(c) of the Act. Dr. MacLachlan also participates in the DuPont Stock Performance Plan and the DuPont Savings and Investment Plan. I have determined that requiring Dr. MacLachlan to terminate his interest in these plans would be an exceptional hardship. He also owns stock in 11 energy concerns: Bethlehem Steel Corp., Burlington Resources Inc., The Coastal Corp., Delmarva Power & Light Co., E. I. du Pont de Nemours and Company, General Electric Co., GTE Corp., Halliburton Co., IMC Fertilizer Group, Inc., USX–US Steel Group, and Weyerhaeuser Co. I have determined that requiring Dr. MacLachlan to sell this stock would be an exceptional hardship. Therefore, I have granted Dr. MacLachlan a waiver of the divestiture requirement of section 602(a) of the Act with respect to the interests described above for the duration of his service as a supervisory employee to the Department.

In accordance with section 208, title 18, United States Code, Dr. MacLachlan has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon DuPont or any of the other entities listed above, unless his appointing official determines that his financial interest in the particular matter are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Dr. MacLachlan.

Dated: May 10, 1995.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 95–13382 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. EA–104]

Application To Export Electricity; Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has requested authorization to export electric energy to Mexico. APS is a regulated public utility incorporated in the State of Arizona and authorized to do business in the States of Arizona and New Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 3, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Warren E. Williams (Program Office) 202–586–9629 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION:

Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On May 5, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to the Comision Federal de Electricidad (CFE), the Mexican national electric utility, pursuant to section 202(e) of the Federal Power Act. APS proposes to sell CFE electricity which is in excess of what is needed for APS customers. Specifically, APS has proposed the sale of economy energy to CFE through the facilities of San Diego Gas & Electric (SDG&E). As an economy energy sale, service can be interrupted or curtailed by APS, CFE, or SDG&E.

The electricity to be sold to CFE would emanate from the APS electrical grid and would be delivered to SDG&E at either the Palo Verde substation west of Phoenix, Arizona, or the North Gila substation, located east of Yuma, Arizona. SDG&E owns two 230-kilovolt (kV) lines which interconnect with CFE. The first connects SDG&E's Miguel substation located east of San Diego, California, with CFE's Tijuana I substation located near Tijuana, Mexico; the second connects SDG&E's Imperial Valley substation located near El Centro, California, with CFE's La Rosita substation located west of Mexicali, Mexico. The construction and operation of these international transmission lines were previously authorized by Presidential Permit numbers PP–68 and PP–79, respectively.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the rules of practice and procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Dennis Beals, Arizona Public Service Company, PO Box 53999, Station 9860, Phoenix, Arizona 85072–3999, (602) 250–3101 and Bruce Gardner, Esq., Arizona Public Service Company, PO Box 53999, Station 9820, Phoenix, Arizona 850772–3999, (602) 250–3507.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214.